

Before the
Federal Communications Commission
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re application of:)
)
WORLDCOM, INC., and its Subsidiaries as)
DEBTOR IN POSSESSION)
Transferor)
)
AND)
)
MCI, INC., and its Subsidiaries)
Transferee)
)
For consent to transfer of control of licenses and)
authorizations held by WorldCom in bankruptcy)

WC Docket 02-215

To: The Commission

REPLY TO "COMMENTS" TO PETITION TO DENY

Margaret F. Snyder, by her attorneys, hereby replies to WorldCom, Inc.'s so-called "Comments" to her timely filed petition to deny the above referenced applications for transfer of control of WorldCom's licenses, authorizations and certifications.¹

CHARACTER MATTERS

In its "Comments" WorldCom takes the position that "investigating such vague concepts as a carrier's 'character' would unnecessarily complicate the licensing

¹ WorldCom incorrectly styles its petition as "Reply Comments of WorldCom, Inc. in Support of Applications." WorldCom's "Comments" should be disregarded, and the allegations made in Mrs. Snyder's petition accepted as unopposed. WorldCom filed "Comments" apparently in hopes of avoiding a response from Mrs. Snyder. Under Section 1.939(f) and 1.45 of the Rules, WorldCom had an opportunity to file within 10 days an opposition to Snyder's timely-filed petition to deny. Had WorldCom so elected, WorldCom was required to serve a copy of the opposition on Snyder's counsel (See Section 1.939(c) of the Rules). Instead, WorldCom posted its "Comments" to the Commission's Electronic Comment Filing System, but did not serve a copy on Mrs. Snyder's counsel. WorldCom, therefore, failed timely to respond to Mrs. Snyder's petition, and violated FCC rules in failing to serve a copy of its "Comments" on Mrs. Snyder's counsel. Further, WorldCom failed to support the factual assertions in its "Comments" with an affidavit of a person with personal knowledge of the matters asserted. (See Section 1.939(f) of the Rules.)

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process.”² In light of WorldCom’s civil fraud conviction and the criminal convictions or indictments of its top officers and managers, the last thing WorldCom wants is an investigation into its character qualifications. However, WorldCom should not be compounding its problems by making statements to the Commission that lack candor. In a diffuse argument, WorldCom claims that character qualifications, especially as set forth in the FCC’s *Character Policy Statement*,³ do not apply to common carriers. Nothing could be further from the truth.⁴

There is nothing vague about the Commission’s policy on character qualifications as it applies to common carriers. In *NYNEX Corporation and Bell Atlantic Corporation For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Red. 19985, 20092 (1997) (“*Bell Atlantic –NYNEX Order*”) the Commission unequivocally stated: “The relevant Commission policy statements indicate that in deciding character issues, the Commission will consider adjudicated non-FCC misconduct that includes (a) all felonies, (b) fraudulent representations to government units, and (c) violations of antitrust or other laws protecting competition.” The Commission has consistently applied this standard to Section 214 common carriers as well as other common carriers, including two-way radio, satellite and cellular/PCS licensees.⁵

² WorldCom “Comments” at p. 10.

³ *Character Policy Statement*, 1195-97, 1200-03, modified, 5 FCC Red. 3252 (1990), recon. granted in part, 6 FCC Red. 3448 (1991), modified in part, 7 FCC Red. 6564, 6566 (1992).

⁴ WorldCom’s “Comments” are not supported by a declaration of an officer of the company as required by Section 1.939(f). However, since the document was prepared by WorldCom employees the FCC can assume that these statements were reviewed by management and that management was aware that they were false or lacked candor.

⁵ See, e.g., *In the Matter of Applications of Consent to the Transfer of Control of Licenses and Section 214 Authorizations from, Southern New England Telecommunications Corporation To SBC Communications, Inc.* 13 FCC Red. 21292, 21305 (1998) (SBC-SNET Order), *In the Matter of Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes*

Despite WorldCom's disingenuous protestation to the contrary, the FCC has a well-established policy concerning common carrier non-FCC misconduct. Likewise there can be no doubt that the FCC has the power to revoke a common carrier's authorizations for FCC related misrepresentations. See, e.g., *In re Business Options, Inc.*, *Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6881 (2003) ("*BOI Hearing Order*") BOI is a common carrier subject to Title II of the Communications Act, with blanket authority to operate domestic common carrier facilities under Section 214 of the Act. In the *BOI Hearing Order*, the Commission sought to revoke BOI's operating authority because "BOI engaged in a pervasive pattern of misrepresentations or lack of candor to the Commission as well as violations of the Commission's rules regarding slamming, discontinuance of service and carrier registration."⁶ In the *BOI Hearing Order*, the Commission stated what has always been its policy: "The duty of absolute truth and candor is a fundamental requirement for those appearing before the Commission. Our decisions rely heavily on the completeness and accuracy of parties' submissions because we do not have the resources to verify every representation made in the thousands of pages submitted to us each day."⁷

Simply stated, character matters. The Commission may disqualify an applicant who deliberately makes misrepresentations or demonstrates a lack candor with the FCC.

Electronics Corporation and EchoStar Communications Corporation, 17 FCC Rcd 20559 (2002), *In Re Application of H&E Overseas, Inc.* For Authority to Construct a Two-Way Paging Facility in the Public Land Mobile Radio Service, 4 FCC Rcd 3774 (1889), *James A. Kay, Jr.* 17 FCC Rcd 1834 (2002), *In re Application of Nancy Naleszkiewicz, For a Construction Permit to Establish a New Cellular System*, 5 FCC Rcd 7131 (Com. Car. Bur. 1990) (The Commission's general policy of not inquiring into alleged criminal conduct in the absence of a conviction is not a bar to inquiry into the applicant's possible involvement in fraud.)

⁶ *BOI Hearing Order*, at p. 6893.

⁷ *BOI Hearing Order*, at p. 6887, citing *Swan Creek Communications v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994), *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981) *cert. denied*, 456 U.S. 927 and 457 U.S. 1119 (1982).

The FCC may also disqualify an applicant, whether a broadcaster or a common carrier, that has committed fraud or has been convicted of a felony. In this case WorldCom has engaged in both FCC related misconduct and relevant non-FCC misconduct.

The case of *Contemporary Media, Inc. v. FCC*, 214 F.3d 187 (D.C. Cir. 2000) is instructive. In *Contemporary Media* the Court upheld the revocation of Contemporary Media's and other affiliated companies licenses after its president was convicted of twelve felony counts and the licensees had made material misrepresentations to the FCC. Like WorldCom's key officers, Contemporary Media's president was convicted of numerous felony counts. Specifically, he was convicted of eight felony counts of sexual assault on individuals between fourteen and sixteen years of age, and four felony counts of forcible sodomy of individuals under fourteen years of age. Unlike WorldCom's fraud, these convictions were not related to the operations of the FCC licenses and authorizations. The FCC ordered an evidentiary hearing in which the licensees were ordered to show cause why their licenses should not be revoked. The central issues at the hearing were (1) the effect of the felony convictions on the basic qualifications of the licensees, and (2) whether the licensees had made misrepresentations to the FCC. The Court confirmed the Commission's finding that revocation was appropriate due to the egregious nature of the misconduct and to the misrepresentations made by the licensees in their reports to the Commission.

The Court reasoned that it was "hardly irrational to conclude that if an individual is unwilling to obey the law with respect to such patently criminal behavior as sexual assault on children, he will be equally unwilling to obey FCC rules that require openness

and honesty with the Commission”⁸ This conclusion is certainly borne out in the case of WorldCom Not only did WorldCom make fraudulent statement to the Securities and Exchange Commission (“SEC”), but also, to cover up its misdeeds, it repeatedly made material misrepresentations to the FCC In its “Comments” WorldCom refers to its fraudulent filings and material misrepresentations to the FCC as mere “inaccuracies” in the data it submitted⁹ Mrs. Snyder submits that this statement alone constitutes a sufficient basis for the revocation of WorldCom’s licenses and authorizations WorldCom admitted to the SEC that what it now calls “inaccuracies,” were, in fact, fraudulent misrepresentations knowingly made to the SEC These same fraudulent misrepresentations in data caused tens of thousands of shareholders, like Mrs. Snyder, to lose their investments

In *Contemporary Media*, the Court also considered mitigating factors in favor of the licensees¹⁰ At hearing, the Commission provided Contemporary Media with a full opportunity to present any mitigating factors Of relevance to this pleading is the factor dealing with the participation of management On this issue the Court found:

Nor was Rice a minor player in management, he was the president of all of the licensees and sat on the board of directors of each And while the other corporate managers did not participate in the sexual assaults for which Rice was convicted, they did participate in other serious misconduct: namely, intentional misrepresentations to the FCC .¹¹

WorldCom’s misconduct and intentional misrepresentations occurred with the full knowledge and approval of its top managers and accountants. *Beyond the top managers,*

⁸ Id. at p. 193

⁹ WorldCom “Comments” pp 12-13

¹⁰ See, *Character Policy Statement*, 5 FCC Rcd 3252 (1990) Mitigating factors are generally developed in a hearing, which WorldCom claims it does not want

the knowledge of and participation in the fraud spread deep into the workings of the company. In her Petition to Deny Mrs. Snyder quoted the Special Investigative Committee of the Board of Directors of WorldCom. That quote is repeated again herein:

Numerous individuals – most of them in financial and accounting departments, at many levels of the Company and in different locations around the world – became aware in varying degrees of senior management’s misconduct. Had one or more of these individuals come forward earlier and raised their complaints with Human Resources, Internal Audit, the Law and Public Policy Department, Anderson, the Audit Committee, individual Directors and/or federal or state government regulators, perhaps the fraud would not have gone on for so long. Why didn’t they?

The fraud committed and the material misrepresentations made were not the work of an isolated group of individuals. Top management orchestrated it, WorldCom’s employees knowingly and willingly carried it out. Such a company does not deserve to remain an FCC licensee.

THE NEED FOR A HEARING

Section 214(a) of the Communications Act provides that no common carrier shall acquire any line “unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require” the operation of the line. Section 214(c) gives the Commission the “power to issue such certificate as applied for [or] to refuse to issue it.” Similarly, Section 310(d) of the Communications Act provides that no construction permit or station license may be transferred, assigned or disposed of in any manner except upon a finding by the FCC that the “public interest, convenience and necessity will be served thereby.” Among the factors that the Commission considers in its public interest inquiry is whether

¹¹ *Contemporary Media*, at p. 195.

the applicant has the requisite “citizenship, character, financial, technical, and other qualifications”¹² If the Commission lacks sufficient evidence to find that the application is in the public interest, then it must either deny the application or designate it for hearing¹³

WorldCom is both a Title II and a Title III common carrier As such, any transfer must be consistent with the policies of the Communications Act, including its policies on character qualifications In seeking to avoid scrutiny under the Commission’s character qualification policy, WorldCom claims that (1) such “vague concepts” as character should not apply to common carriers and (2) the issue of WorldCom’s fraud has already been reviewed or is being reviewed by the SEC or the Department of Justice (“DOJ”), therefore there is no need for the Commission to conduct its own investigation Each of these issues is addressed *seriatim*

As has been discussed herein, a licensee’s responsibilities under the FCC’s character policy statement are not a “vague concepts” In *Contemporary Media* the licensees also challenged the legitimacy of the FCC’s character policy¹⁴ The Court found no merit to their claims that the FCC’s character policy was arbitrary and capricious WorldCom’s claim that character is a “vague concept” begs the question of whether the new and improved WorldCom can be trusted as a Commission licensee WorldCom contends that after the accounting fraud was discovered the new WorldCom took “unprecedented” measures to adopt “strict ethical standards” to ensure that

¹² *SBC-SNEI Order*, 13 FCC Rcd 21292,21305 Accord, *Bell Atlantic –NYNEX Order*, 12 FCC Rcd 19985 20002

¹³ 47 U.S.C. §309(e) See e.g., *Tele-Media Corp. v. FCC*, 697 F.2d 402, 409 (D.C. Cir. 1983), *Southwestern Operating Co. v. FCC* 351 F.2d 834, 835 n.2 (D.C. Cir. 1965), *Sprint Corp.*, 11 FCC Rcd 1850, 1855 (1996)

¹⁴ *Contemporary Media*, at p. 192-3

WorldCom “remains a good corporate citizen”¹⁵ In its “Comments” however, WorldCom simultaneously claims that a licensee’s responsibility to be forthcoming and truthful with the FCC is a “vague concept.” If WorldCom truly believes that the responsibility to make accurate and truthful disclosures to the Commission and not engage in fraudulent or criminal behavior is a “vague concept” then, Mrs. Snyder respectfully submits that as a *prima facie* matter, WorldCom cannot be trusted or relied on as a Commission licensee

WorldCom also claims that a hearing is not necessary, because the accounting fraud and criminal behavior of WorldCom and its top managers “have already been reviewed or are in the process of being reviewed, in other forums.”¹⁶ According to WorldCom, the SEC and the DOJ have “fully investigated these issues.” Neither the SEC, nor the DOJ, are responsible for determining an applicant’s qualifications to be an FCC licensee That regulatory mission belongs to the FCC and the FCC alone. For the Commission to allow other agencies to determine the qualifications of a licensee would be an improper delegation of its Congressional authority¹⁷

The Commission has no record before it on which it can base a decision Clearly, WorldCom and its employees have committed civil and criminal fraud, but the underlying documentation demonstrating the extent of the fraud and the identities of all the persons involved have not been presented to the Commission. For example, there is no evidence in the record to support WorldCom’s claim that every person involved in the fraud has been removed from the company On the contrary, the available evidence shows that there were “numerous” participants “at many levels” who participated in the

¹⁵ WorldCom “Comments” p. 4

¹⁶ WorldCom “Comments” at p. 12

fraud or its cover-up. WorldCom admits that it did not interview the highest-ranking wrongdoers, so it does not know which of its employees were in fact involved. "See no evil" is not an acceptable character standard before the FCC.

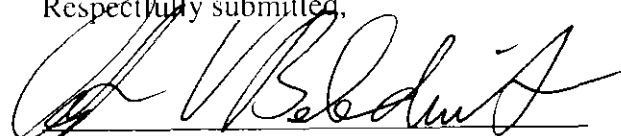
Neither has WorldCom submitted any evidence concerning its present character qualifications or any mitigating factors it might wish the Commission to consider. It has not even submitted declarations under penalty of perjury, as required by the Commission's rules. In short, there has been no opportunity for the Commission to examine those who committed the fraud or those who now claim they are operating WorldCom based on the "strictest ethical standards." A hearing would give WorldCom a full and fair opportunity to present its case. After all the evidence has been mustered and presented, the Commission, based on the record before it, can decide whether WorldCom is qualified to remain a Commission licensee.

CONCLUSION

For the reasons stated herein, Mrs. Snyder requests that the Commission designate WorldCom's licenses and authorizations for hearing to determine whether WorldCom possess the necessary character qualifications to remain a Commission licensee.

Respectfully submitted,

By



Arthur V. Belendiuk

Counsel to Margaret F. Snyder

Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., # 301
Washington, D.C. 20016
(202) 363-4050

August 26, 2003

¹⁷ See e.g. 47 U.S.C. §§ 214 and 309.

CERTIFICATE OF SERVICE

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "Petition to Deny Transfer of Licenses, Authorizations, and Certifications of WorldCom, Inc." was mailed by First Class U S Mail, postage prepaid or via email, this 26th day of August, 2003, to the following

Dennis W. Guard, Esquire
1133 Nineteenth Street, N.W.
Washington, D.C. 20036
Counsel for WorldCom, Inc

Howard J. Barr, Esquire
Womble, Carlyle, Sandridge & Rice, PLLC
1401 Eye Street, N.W., Seventh Floor
Washington, D.C. 20005
Counsel for Office of Communication of the
United Church of Christ, Inc

Qualex International
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(Via email: qualexint@aol.com)

David Krech, Esquire
Federal Communications Commission
Policy Division
International Bureau
445 12th Street, S.W., Room 7-A664
Washington, D.C. 20554
(Via email: David.Krech@fcc.gov)

Erin McGrath, Esquire
Federal Communications Commission
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S.W.
Washington, D.C. 20554
(Via email: Erin.Mcgrath@fcc.gov)

Jeffery Tobias, Esquire
Federal Communications Commission
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
445 12th Street, S W , Room 2-C828
Washington, DC 20554

(Via email jtobias@fcc.gov)

JoAnn Lucanik, Esquire
Federal Communications Commission
Satellite Division
International Bureau
445 12th Street, S W , Room 6-A660
Washington DC 20554

(Via email JoAnn.Lucanik@fcc.gov)

Christine Newcomb, Esquire
Federal Communications Commission
Competition policy Division
Wireline Competition Bureau
445 12th Street, S.W , Room 5-C360
Washington, DC 20554

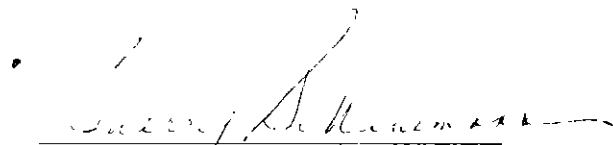
(Via email cnewcomb@fcc.gov)

Ann Bushmiller, Esquire
Federal Communications Commission
Transaction Team
Office of General Counsel
455 12th Street, S W , Room 8-A831
Washington, DC 20554

(Via email Ann.Bushmiller@fcc.gov)

Wayne McKee
Federal Communications Commission
Engineering Division
Media Bureau
445 12th Street, S W , Room 4-C737
Washington, DC 20554

(Via email Wayne.Mckee@fcc.gov)


Sherry L. Schunemann